THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.3162 OF 2000

DATED: 03-02-2007

BETWEEN

Prof. B. Bhaskara Rao, S/o. B.S.N. Patnaik,
Occ: Professor, presently residing at New
South Wales, Sydney, Australia, Rep. by
his G.P.A. Holder Sri Dabbiru Chandra
Sekhar, S/o. Dr. D.B.S. Patnaik,
Occ: Business, R/o. Amadalavalasa,
Srikakulam District and another.

...PETITIONER

AND

State of Andhra Pradesh, Rep. by its
Principal Secretary, Home and Cinematography,
Secretariat Buildings, Hyderabad and others.

...RESPONDENTS

ORDER:

Petitioners seek a Writ of Certiorari calling for the records in G.O.Rt.No.2786 dated 27.10.1999 and quash the same and restore the order of the Joint Collector – 2nd respondent refusing to renew the licence in favour of the fourth respondent in respect of the cinema theatre at Amadalavalasa and for a consequential direction to the respondents not to permit or allow the theatre to be run.

2. The undisputed facts are that the father of the first petitioner is the husband of the second petitioner, namely Sri Behara Satyanarayana Patnaik, who was the owner of the cinema hall known as Sri Lakshmi Talkies at Amadalavalasa in Srikakulam District and
he granted lease in favour of the fourth respondent for a period of 15 years

vide registered lease deed dated 04.09.1982 and the lease expired on 31.07.1997. After the death of the original owner, his son and wife, the petitioners herein succeeded the said property and immediately after expiry of the lease the petitioners issued a legal notice to the fourth respondent to vacate and handover the vacant possession of the said premises.

3. The licensing authority is the Joint Collector and the power to grant renewal of the licence is the Revenue Divisional Officer.
It is stated that after expiry of the licence, the petitioners filed objection petitions before the third respondent not to grant renewal of licence to the fourth respondent. However, the fourth respondent filed suit O.S.No.88 of 1997 on the file of the Sub-Court, Srikakulam against the petitioners for injunction restraining them from interfering with his enjoyment of the suit schedule premises and also for recovery of certain amount and obtained temporary injunction, which was vacated subsequently. It is further stated that the petitioners also filed a suit for eviction of the fourth respondent. However, the controversy involved in this writ petition relates to the renewal of B Form licence relating to the said cinema hall.

4. Learned counsel for the petitioners submits that the third respondent – Revenue Divisional Officer by order dated 31.12.1998 in Rc.No.3284/97 rejected the request of the fourth respondent to renew the licence in his favour on the ground that he has failed to produce any evidence of his lawful possession of the theatre and also in view of the orders vacating the interim injunction by the civil Court. Aggrieved by the said order the fourth respondent filed an appeal before the Government and the Government by impugned order in G.O.Rt.No.2786 Home (General – A) Department dated 27.10.1999 requested the Collector, Srikakulam to continue the C – Form licence pending settlement of the claims of the respective parties in the suit in O.S.No.88 of 1997 before the Sub-Court, Srikakulam. Aggrieved by the said order this writ petition has been filed contending that the suit O.S.No.88

of 1997 has nothing to do with the renewal of licence and there was no right of renewal in favour of the lessee and there was no dispute with regard to the expiry of the lease; therefore, it cannot be said that the fourth respondent is in lawful possession of the said cinema theatre.

5. Learned counsel for the petitioners further submits that Rule 11(B) of the Andhra Pradesh Cinemas (Regulation) Rules, 1970 (for short 'the Rules') deals with grant of licence to cinema buildings and as per Rule 11(B)(2) unless the licensing authority satisfies that the applicant is in lawful possession of the site, building and equipment apart from other reports and certificates, he cannot be issued licence. He further submits that whatever requirements applicable for grant of licence the same are applicable for renewal of licence under Rule 12(B) of the Rules. He further submits that as per the judgments of this Court and the Apex Court, the said Rules have been incorporated with regard to lawful possession in reference to the expiry of lease deed and held that after the expiry of the lease deed, it cannot be said that the tenant is in lawful possession of the site, building and equipment; therefore, the lessee is not entitled for renewal of licence.

6. In support of the aforesaid contentions the learned counsel for the petitioners relied on a Full Bench judgment of this Court in **Y. ANASUYA v. GOVERNMEMT OF ANDHRA PRADESH**[1]**;** in **M.C. CHOCKALINGAM v. V. MANICKAVASAGAM**[2]**;** in **R.V. BHUPAL PRASAD v. STATE OF ANDHRA PRADESH**[3] and the latest judgment of this Court in **VEMURI LAKSHMI NAGESWARA RAO v. JOINT COLLECTOR & ADDITIONAL DISTRICT MAGISTRATE**[4]**.** In the aforesaid judgments it is clearly held that the licensing authority must satisfy itself that the applicant is in lawful possession of the site, building and equipment and also held that the rules contemplated for grant of licence are also applicable for renewal of licence. In view of the aforesaid judgments, I

am of the opinion that the order of the Government directing to continue the licence in favour of the fourth respondent, in whose favour the lease stands expired long back, is illegal and arbitrary. However, the suits filed by the fourth respondent have been dismissed and appeals are pending.

7. Having regard to the aforesaid facts and circumstances of the case and also in view of the aforesaid authoritative judgments, I am of the opinion that the impugned order of the Government cannot be sustained and it is accordingly quashed.

The writ petition is accordingly allowed as prayed for.

There shall be no order as to costs.

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V. ESWARAIAH, J

July 3, 2007
DSK

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[1] 1993 (1) ALT 661 (FB)

[2] AIR 1974 SC 104

[3] AIR 1996 SC 140

[4] 2006 (3) ALT 28